

INSERT <sup>7-5</sup> ~~12~~

f. Repealed s. 880.34 (6), stats., as does  
WLC: 0220/PI (annual review, etc.).

g. Added to s. 54.25 (2) (d) 2. a. language  
from WLC: 0220/PI concerning voluntary  
receipt by a ward of medication, including  
psychotropic medication, if the ward does  
not protest, prohibiting the <sup>involuntary</sup> administration  
of psychotropic medication, defining "protest,"  
and creating a best interest standard.

h. Repealed s. 880.33(2)(d), stats. (hearing  
on petition).

Please see my Drafter's Note concerning this  
topic and its treatment in this draft.

End of  
NOTE

INSERT <sup>7-13</sup> ~~2/14~~

(4) "Degenerative brain disorder" means an individual's loss or disfunction of brain cells to the extent that the individual is substantially impaired in ability to provide for his or her own care or custody.

\*\*\* NOTE: This is the definition (revised grammatically) from WLC:0037/1.

Does one provide for one's own custody?  
End of \*\*\* NOTE

(5) "Depository account" has the meaning given in s. 815.18(2)(e).

7-14

INSERT ~~243~~

\*\*\*\* NOTE: I have renumbered most of the definitions in this draft, to account for added definitions. This subsection was originally numbered (3m) as a time-saving measure. In addition, I have not added "or s. 243.10" as requested. The definition under s. 243.07(1)(a) subsumes the form for the Wisconsin basic power of attorney for finances and property under s. 243.10; in addition, s. 243.10 is not a definition per se; and, lastly, a defined term in the statutes that refers to another defined term may have only one referent (i.e., it may not be defined to be "A" or "B").

(I)

\*\*\*\* NOTE: Note that I have not included your proposed definition of evaluative "evaluative capacity." Please see the \*\*\*\* NOTE under the definition of "incapacity."

End of NOTES

INSERT ~~4-14~~  
7-14

\*\*\*\* NOTE: I did not include corporate guardians, entity guardians in this definition as requested. Please look at the definition of "person" in s. 990.01 (26) (which applies to all the statutes). It encompasses corporate guardians and entity guardians. This definition indicates that only a guardian of the estate is appointed for a spendthrift; correct?

End of NOTE

(8) "Guardian of the person" means a guardian comply with the duties specified in s. 54.25(1) and to appointed to exercise any of the powers specified in s. 54.25 (2).

(9) "Guardian of the estate" means a comply with the duties specified in s. 54.19 and to guardian appointed to exercise any of the powers specified in s. 54.20.

End of  
INSERT 7-14

reverse order

INSERT <sup>7-15</sup>~~2-10~~

(B)  
(10) "Incapacity" means the inability of an individual effectively to receive and evaluate information or to communicate a decision with respect to the exercise of a right or power.

On Betsy Abramson's advice,  
\*\*\*\* NOTE: (this definition is the same language as that proposed in your "Appendix: Alternative Language" as the definition of "evaluative capacity," except that: (1) It is written in the negative (i.e., "inability," rather than "ability"); (2) I omitted "make [a decision]" because that seems redundant to "communicate a decision"; (3) I omitted <sup>hand</sup> "decisionmaking," because that seems unnecessary (all powers of an individual would appear to require

7-15

INSERT ~~2-10~~

some form of decisionmaking). Note that

this definition replaces use of the terms

"incapacity,"

"functional

capacity, <sup>and</sup> "evaluative capacity" throughout

the draft, except for the term "incapacity

of the guardian," which has been changed

to "inability of the guardian." This change

particularly affects the following: 54.01(21), 54.15(4),

54.21(b)(a) and (c), 54.52(2), and 54.68(2)(f).

After studying the issue further, I did not

change the term "incapacitated" as it is

(remembered from s. 50.06, stats.)

used in numerous places in s. 54.50(2); use

of that term in that subsection is subject to the

definition of the term in s. 54.50(2)(a), which

limits the individual lack of capacity to health

care decisions; I would think that you would

want to keep this limitation. Please review.

INSERT ~~3-12~~ 8-4

\*\*\*NOTE: I have repealed the definition  
of "incompetent" that was <sup>amended</sup> under 03-0039/PI, because  
the new language proposed for s. 54.10 replaces the definition.  
I also have not drafted the definition  
of "individual found incompetent" that  
was proposed, because, where the term is  
used, reference to s. 54.10 can be added and  
the defined term is then unnecessary. See, for  
example, this treatment in s. 54.01(7).

~~NOTE~~  
End of

INSERT ~~4-11~~ 8-16

\*\*\* NOTE : Please note that I retained "or," rather than using "and" as proposed for s. 54.01 (12)(a) 2, 3, and 4, to avoid the implication that all persons specified would be collectively required to function as "interested persons". Also, your instructions were unclear: do you wish to retain "fiduciary" in the phrase "appointed to act as ..."?

INSERT ~~5/17~~ 9-14

\*\*\*\* NOTE: I did not draft the language you proposed as a change to this subdivision from the language in <sup>LRB-</sup>0039/PI, because, under your wording, the corporation counsel of the county in which the petition is filed would only <sup>I</sup> be included if the petition was filed in a county <sup>I</sup> other than the county of the proposed ward's residence; I assumed that this result is not what you intend.

End of NOTE  
\*\*\*\*

INSERT ~~6-1~~ 9-17

\*\*\*\* NOTE: Please note that I did not make the change from "any" to "all," so as to avoid the implication that an "interested person" must include all those specified.

End of  
NOTE

INSERT ~~608~~ 10-4

(13) "least restrictive" means that which places the least possible restriction on personal liberty and the exercise of rights and that promotes the greatest possible integration of an individual into his or her community that is consistent with meeting his or her essential requirements for health, safety, habilitation, treatment, and recovery and protecting him or her from abuse, exploitation, and neglect.

\*\*\* NOTE: I did not draft "constitutional" to modify rights; presumably, you don't want to limit the person to constitutionally-guaranteed rights to the exclusion of statutory rights.

End of \*\*\* NOTE

INSERT ~~23~~ 10-9

(16) <sup>(B)</sup> "Proposed ward" means an individual, including a minor, a person alleged to be incompetent, and an alleged spendthrift, for whom a petition for guardianship is filed.

~~\*\*\*~~ NOTE: Please review this definition. Because you have decided to include spendthrifts in ch. 54, use of this definition eliminates the necessity of specifying spendthrifts throughout the chapter, as does the definition of "ward."

End of  
INSERT

11/28/2003

275

WLC. 0220/P11

(18) (B)

1 ~~(3)~~ In this section, "psychotropic medication" means a prescription drug, as defined in  
2 s. 450.01 (20), that is used to treat or manage a psychiatric symptom or challenging behavior.

3 (4) In addition to the other requirements of ch. 55 pertaining to petitions for protective  
4 services, a petition under this section shall allege the following:

5 (a) A physician has prescribed psychotropic medication for the person.

6 (b) The person is not competent to refuse psychotropic medication. "Not competent  
7 to refuse psychotropic medication" means that as a result of developmental disabilities,  
8 degenerative brain disorder, serious and persistent mental illness, or other like incapacities,  
9 and after the advantages and disadvantages of and alternatives to accepting the particular  
10 psychotropic medication have been explained to the individual, the individual is incapable of  
11 expressing an understanding of the advantages and disadvantages of accepting treatment, and  
12 the alternatives to accepting treatment, or the individual is substantially incapable of applying  
13 an understanding of the advantages, disadvantages, and alternatives to treatment to his or her  
14 condition in order to make an informed choice as to whether to accept or refuse psychotropic  
15 medication.

16 (c) The person has refused to take the psychotropic medication voluntarily or  
17 attempting to administer psychotropic medications to the person voluntarily is not feasible or  
18 is not in the best interests of the person. If the petition alleges that the person has refused to  
19 take psychotropic medication voluntarily, the petition shall identify the reasons the person  
20 refuses to take psychotropic medication voluntarily and shall contain evidence showing that  
21 a reasonable number of documented attempts to administer psychotropic medication  
22 voluntarily using appropriate interventions that could reasonably be expected to increase the  
23 person's willingness to take psychotropic medication voluntarily have been made and have  
24 been unsuccessful. If the petition alleges that attempting to administer psychotropic

INSERT ~~75~~  
10-11

P-27  
2

Section # 51.01 (3g) of the statutes is renumbered 54.01 (20) and amended to read:

19

Serious and persistent

~~51.01 (20)~~ "Chronic mental illness" means a mental illness which is severe in degree and persistent in duration, which causes a substantially diminished level of functioning in the primary aspects of daily living and an inability to cope with the ordinary demands of life, which may lead to an inability to maintain stable adjustment and independent functioning without long-term treatment and support and which may be of lifelong duration. "~~Chronic~~ mental illness" includes schizophrenia as well as a wide spectrum of psychotic and other severely disabling psychiatric diagnostic categories, but does not include infirmities of aging or a primary diagnosis of mental retardation or of alcohol or drug dependence.

degenerative brain disorder

History: 1975 c. 430 ss. 11, 81; 1977 c. 26; 1977 c. 203 s. 106; 1977 c. 428; 1981 c. 79 s. 17; 1983 a. 189 s. 329 (19); 1983 a. 441; 1985 a. 29 s. 3202 (23); 1985 a. 265, 307; 1993 a. 445; 1995 a. 27; 1997 a. 47; 1999 a. 9.

as s. 51.01 (3g) stat.

\*\*\* NOTE: I included this definition (the same) because the term "serious and persistent mental illness" is now used in s. 54.15 (6) and is not, at present, elsewhere defined. It contains the term "infirmities of aging," which I have changed to "degenerative brain disorder." Please review.

End of NOTE

INSERT ~~7-10~~ 10-16

\*\*\*\* NOTE: I created this definition in  
, instead of renumbering it from ch. 880, stats.,  
ch. 54 because it is used in subchapter IV of  
ch. 880, stats. Do you want to move  
subch. IV to ch. 54? <sup>where?</sup> Is my changed language  
for the definition what you want?

End of NOTE

### Appendix: Alternative Language

#### Subchapter 1: Definitions

- ✓ "Evaluative capacity" means the ability of an individual to effectively receive and evaluate information or make or communicate decisions with respect to exercise of a right or decision-making power.
- ✓ "Guardian of the person" means a guardian appointed to exercise one or more of the powers listed in sec. \_\_\_\_.
- ✓ "Guardian of the estate" means a guardian appointed to exercise one or more of the powers listed in sec. \_\_\_\_.
- ✗ "Individual found incompetent" means an individual for whom a guardian has been appointed by a court based on a finding that the individual is incompetent under sec. \_\_\_\_.
- "Least restrictive" means placing the least possible restriction on personal liberty and exercise of constitutional rights and promoting the greatest possible integration of the individual into his or her community consistent with meeting the person's essential requirements for health, safety, habilitation, treatment and recovery and protecting the person from abuse, exploitation and neglect.

#### Subchapter 2: Appointment of Guardian

Note: This will replace the LRB draft sec.54.10 – Appointment of guardian; determination of incompetence – which was our draft proposal's Section 1.

- ⑦ B (1) The court may appoint a guardian of the person or a guardian of the estate for a proposed ward if the court determines the person is a minor as defined in 440.01.
- ⑦ A (2) (a) The court may appoint a guardian of the person or a guardian of the estate, or both, for an individual based on a finding that the individual is incompetent only if the court finds by clear and convincing evidence that all of the following are true:
- 3 B ⑦ ⑧ 1. The individual is at least 17 <sup>aged</sup> ~~and three quarters~~ years <sup>to</sup> ~~of age~~ <sup>and 9 months</sup>.
2. For purposes of appointment of a guardian of the person, because of an impairment, the individual is unable to effectively receive and evaluate information or make or communicate decisions to such an extent that the individual is unable to meet the essential requirements for his or her physical health and safety ~~AND/OR~~ <sup>to</sup>.
3. ⑧ ⑨ For purposes of appointment of a guardian of the estate, because of an impairment, the individual is unable to effectively receive and evaluate information or make or communicate decisions related to management of his or her property or financial affairs, to the extent that ~~the individual~~ <sup>any of the following applies:</sup>
- a. <sup>The individual</sup> has property that will be dissipated in whole or in part ~~AND/OR~~ <sup>to</sup>.
  - b. <sup>The individual</sup> is unable to provide for his or her support ~~AND/OR~~ <sup>to</sup>.
  - c. <sup>The individual</sup> is unable to prevent financial exploitation.
4. ⑩ The individual's need for assistance in decision-making or communication ~~cannot~~ <sup>is unable to</sup> be met effectively and less restrictively through appropriate and reasonably available training, education, support services, health care, assistive devices or other means that the individual will accept.

under par. (a)

statement

(b) Unless the proposed ward is unable to communicate decisions effectively in any way, the determination may not be based on mere old age, eccentricity, poor judgment, or physical disability. s. 54.25(2)(c) s. 54.18, 54.20, or 54.25(2)

(c) In appointing a guardian under this subsection, declaring incompetence to exercise a right under ~~sub. 109~~, or determining what powers it is appropriate for the guardian to exercise under ~~sub. 109~~, the court shall consider all of the following:

1. The report of the guardian ad litem, as required in ~~sub. 109~~
2. The medical or psychological ~~assessment~~ provided under ~~sub. 109~~ independent evaluation under sub. 109 and any additional medical or psychological evaluation ordered by the court under sub. 109 or offered by a party and received by the court. s. 54.40(4) (b) (c) s. 54.36
3. Whether other reliable resources are available to provide for the individual's personal needs or property management, and whether appointment of a guardian is the least restrictive means to provide for the individual's need for a substitute decision-maker. desires
4. The preferences, ~~wishes~~ wishes, and values of the individual with regard to personal needs or property management. individual's
5. The nature and extent of the ~~person's~~ person's care and treatment needs and property and financial affairs.
6. Whether the ~~person's~~ person's situation places him or her at risk of abuse, exploitation, neglect, or violation of rights.
7. Whether the individual can adequately understand and appreciate the nature and consequences of his or her impairment.
8. The individual's management of the activities of daily living.
9. The individual's understanding and appreciation of the nature and consequences of any inability he or she may have with regard to personal needs or property management OK FOR SAME AS #4 above
10. The extent of the demands placed on the individual by his or her personal needs and by the nature and extent of his or her property and financial affairs.
11. Any physical illness of the individual and the prognosis of the individual.
12. Any mental disability, alcoholism, or ~~substance~~ substance dependence of the individual and the prognosis of the mental disability, alcoholism, or ~~substance~~ substance dependence. individual's
13. Any medication with which the individual is being treated and the medication's effect on the individual's behavior, cognition and judgment. other drug
14. Whether the effect on the ~~person's~~ person's evaluative capacity is likely to be temporary or long-term, and whether the effect may be ameliorated by appropriate treatment and
15. Other relevant evidence. s. 54.25(2)(c) s. 54.18, 54.20, or 54.25(2)

, or other

\*\*\* NOTE: Are the cross-references in par. (c) (intro.), 1., and 2. what you intend?

(d) Before appointing a guardian under this subsection, declaring incompetence to exercise a right under ~~sub. 109~~, or determining what powers it is appropriate for the guardian to exercise under ~~sub. 109~~, the court shall determine if additional medical, psychological, social, vocational or educational evaluation is necessary for the court to make an informed decision respecting competency to exercise legal rights and may obtain

1  
2 the individual's

assistance in the manner provided in s. 55.06(8) whether or not protective placement is made.

(e) In appointing a guardian under this subsection, the court shall authorize the guardian to exercise only those powers, ~~enumerated in s. 54.25(2)~~ (that are necessary to provide for the individual's personal needs and property management) in a manner that is appropriate to the individual and that constitutes the least restrictive form of intervention.

under ss. 54.18, 54.20, and 54.25(2)

(3) If both a guardian of the person and a guardian of the estate ~~are appointed~~ for an individual, the court may appoint separate persons to be guardian of the person and of the estate, or may appoint one person ~~or persons~~ to act as both.

the court appoints

and to exercise the powers

End INSERT 10-9 13-19

**Subchapter 3, Section 4—Powers of the Guardian of the Person –**

*NOTE: Most of this would replace the LRB draft at sec. 54.25(2).*

- (1) **Presumption in favor of limited guardianship.** A guardian of the person may exercise only those rights and powers that the guardian is specifically authorized to exercise by the court order. Any right or power that the guardian is not authorized to exercise by the court order is retained by the individual, unless the individual has been declared incompetent to exercise the right under sub. (3) or the power has been transferred to the guardian under (4).
- (2) **Rights retained by all persons found incompetent.** An individual found incompetent retains the power to exercise all of the following rights, without consent of the guardian:
  - (a) To have access to and communicate privately with the courts and government representatives, including but not limited to the right to have input into plans for support services, the right to initiate grievances, including but not limited to state and federal law regarding resident or patient rights, administrative hearings, and court proceedings.
  - (b) Other Rights – To have access to, communicate privately with and retain legal counsel, with fees paid by the ward's estate, subject to court approval.
  - (c) Private Communications – To have access to and communicate privately with representatives of the protection and advocacy agency under sec. 51.62 and the board on aging and long term care.
  - (d) Other Rights - Any other rights specifically reserved to the individual by statute or the constitutions of the state or the United States, including but not limited to the rights:
    - 1. To protest a residential placement made under s. 55.05(5), and to be discharged from a residential placement unless the individual is protectively placed under s. 55.06, or the elements of s. 55.06(11) are present.
    - 2. To petition for court review of guardianship, protective service, protective placement and commitment orders.
    - 3. To give or withhold a consent reserved to the individual under ch. 51.
    - 4. To free speech, freedom of association and free exercise of religious expression.
  - (e) Right to testify

INSERT A (Part of INSERT TO 9)

**B**

(2) A court may appoint a guardian of the estate for a proposed ward if the court determines that the individual is a spendthrift.

\*\*\*\* NOTE: Although you indicate that you wish to include spendthrifts in ch. 54, no language proposed addresses the actual appointment or any standard to be used. I have created s. 54.10 (2) to begin to address this issue. Please review.

End of NOTE

INSERT ~~13-8~~ 14-7

(9)

(B)  
(3)

(CS)

AGENT UNDER A POWER OF ATTORNEY FOR

HEALTH CARE.

The court shall appoint as guardian of the person the agent under a proposed ward's power of attorney for health care, unless the court finds that the appointment of the agent is not in the best interests of the proposed ward.

(B)

(CS)

(9)

(4) Person nominated by proposed ward.

no 44

~~In addition, in exercising powers and duties under this section, the guardian of the estate shall consider, consistent with the functional limitations of the ward, all of the following:~~

9

(1) (a) The ward's understanding of the harm that he or she is likely to suffer as the result of his or her inability to manage property and financial affairs.

9

(b) The ward's personal preferences and desires with regard to managing his or her activities of daily living.

(c) The least restrictive form of intervention for the ward.

\*\*\* NOTE: Does this subsection

now conform to your intent?

INSERT ~~2/3/17~~ 18-7

(e) Ascertain and exercise any rights available to the ward under a retirement plan or account.

\*\*\*\* NOTE: I did not draft "Establish" as proposed, because a guardian would not, for instance, have the right to establish a right in a retirement plan; did you mean "Ascertain," as I have drafted?

"Make application for?"

INSERT ~~23-116~~ 18-11

\*\*\* NOTE: By "lifetime transfer," do  
you mean during the life of the ward? If  
so, "lifetime" seems unnecessary; is "other"  
transfer, instead, okay?

→ WP

INSERT ~~2021~~ 1913

⑨ (a) "Other individual" means any of the following:

⑨ 1. The ward's spouse, if any.

⑨ 2. The guardian ad litem of the ward's minor child, if any.

⑨ 3. The ward's disabled child, if any.

⑨ \*\*\*\* NOTE: What does "disabled" mean in this context? Developmental disability? Physical disability?

End of NOTE

⑨ 4. Any of the ward's siblings who has an ownership interest in property that is co-owned with the ward.

⑨ 5. Any of the ward's children who is a caregiver, as defined in s. 46.986(1)(b), for the ward.

⑨ \*\*\*\* NOTE: Is the definition of "caregiver" suitable for your purposes?

⑨ (b)

INSERT 2615 + 19-17

\*\*\*\* NOTE: Wouldn't "guardian" in sub (2)  
(intro.) actually be "guardian of the person," since  
a guardian includes a guardian of the estate?

End of NOTE

INSERT ~~28-151~~ 21-15

(d) The petitioner and the court shall keep confidential the information in a will or similar instrument, or a copy of the will or similar instrument, under this subsection, and may not, unless otherwise authorized, disclose that information.

\*\*\* NOTE: Does this paragraph meet your intent?

End of NOTE

INSERT ~~29613~~ 22-13

\*\*\* NOTE: I understand that this provision is  
sought to codify Matter of Guardianship of F.E.H.,  
154 Wis.2d 576 (1990). Therefore, I included "immediate"  
as an adjective modifying "family".

assistance in the manner provided in s. 55.06(8) whether or not protective placement is made.

(e) In appointing a guardian under this subsection, the court shall authorize the guardian to exercise only those powers, enumerated in sec. \_\_\_\_\_ that are necessary to provide for the individual's personal needs and property management in a manner that is appropriate to the individual and that constitutes the least restrictive form of intervention.

(3) If both a guardian of the person and a guardian of the estate are appointed for an individual, the court may appoint separate persons to be guardian of the person and of the estate, or may appoint one person or persons to act as both.

**Subchapter 3, Section 4—Powers of the Guardian of the Person –**

NOTE: Most of this would replace the LRB draft at sec. 54.25(2).

individuals determined

- ① a (1) **Presumption in favor of limited guardianship.** A guardian of the person may exercise only those rights and powers that the guardian is specifically authorized to exercise by the court order. Any right or power that the guardian is not authorized to exercise by the court order is retained by the individual, unless the individual has been declared incompetent to exercise the right under sub. (3), or the power has been transferred to the guardian under ~~sec. 54.25(2)~~ **par. (d)** or **par. (e)**.
- ① b (2) **Rights retained by all persons found incompetent.** An individual found incompetent retains the power to exercise all of the following rights, without consent of the guardian:
  1. ~~to have access to and communicate privately with the courts and governmental representatives, including~~ **to have access to and communicate privately with the courts and governmental representatives, including** ~~but not limited to~~ **but not limited to** the right to have input into plans for support services, the right to initiate grievances, including ~~but not limited to~~ **but not limited to** state and federal law regarding resident or patient rights, administrative hearings, and court proceedings.
  2. ~~to have access to, communicate privately with, and retain legal counsel, with fees paid by the ward's estate, subject to court approval.~~ **to have access to, communicate privately with, and retain legal counsel, with fees paid by the ward's estate, subject to court approval.**
  3. ~~to have access to and communicate privately with representatives of the protection and advocacy agency under sec. 51.62 and the board on aging and long-term care.~~ **to have access to and communicate privately with representatives of the protection and advocacy agency under sec. 51.62 and the board on aging and long-term care.**
  7. ~~to exercise any other rights specifically reserved to the individual by statute or the constitutions of the state or the United States, including~~ **to exercise any other rights specifically reserved to the individual by statute or the constitutions of the state or the United States, including** ~~but not limited to~~ **but not limited to** the rights to free speech, freedom of association, and the free exercise of religious expression.
    4. ~~to protest a residential placement made under s. 55.05(5), and to be discharged from a residential placement unless the individual is protectively placed under s. 55.06, or the elements of s. 55.06(11) are present.~~ **to protest a residential placement made under s. 55.05(5), and to be discharged from a residential placement unless the individual is protectively placed under s. 55.06, or the elements of s. 55.06(11) are present.**
    5. ~~to petition for court review of guardianship, protective service, protective placement and commitment orders.~~ **to petition for court review of guardianship, protective service, protective placement and commitment orders.**
    6. ~~to give or withhold a consent reserved to the individual under ch. 51.~~ **to give or withhold a consent reserved to the individual under ch. 51.**
    8. ~~to free speech, freedom of association and free exercise of religious expression.~~ **to free speech, freedom of association and free exercise of religious expression.**

(e) Right to testify

I not B

subd. 1. or 4.

(c) Declaration of incompetence to exercise certain rights.

~~Application~~

under s. 54.44

or f.  
↑↑

individual

1. The court may, as part of a proceeding in which an individual is found incompetent and a guardian is appointed, declare that the individual lacks evaluative capacity to exercise one or more of the rights listed in subd. 1. or 4.

following

3. If an individual has been declared not competent to exercise a right under subd. 1. or 4., a guardian does not have the authority to carry out or provide consent on behalf of the individual.

may not exercise the right

no #

2. If the court finds with respect to a right listed under subd. 1. or 4. that the person is competent to exercise the right under some but not all circumstances, the court may order that the person retains the right to exercise the right only with consent of the guardian of the person.

Subd. 1. a., d., e.

under subd. 1.

Any finding that a person lacks evaluative capacity to exercise a right must be based on clear and convincing evidence. In the absence of such a finding, the right is retained by the individual.

an individual

4. Regardless of whether a guardian is appointed, a court may declare that an individual is not competent to exercise the right to vote if it finds by clear and convincing evidence that the individual is incapable of understanding the objective of the elective process. If the petition for a declaration of competence to vote is not part of a petition for guardianship, the same procedures shall apply as would apply for a petition for guardianship.

individual

INSERT F

- a. ~~That an individual is not competent to consent to marriage.~~
- b. ~~That an individual is not competent to execute a will.~~
- c. ~~That an individual is not competent to serve on a jury.~~
- d. ~~That an individual is not competent to apply for more of the licenses listed in subd. 1. or 4., if it finds that the person is incapable of understanding the nature and risks of the licensed activity, to the extent that engaging in the activity would pose a substantial risk of physical harm to the individual or others. A failure to find that a person is incapable of applying for a license is not a finding that the person qualifies for the license under applicable laws and rules.~~

The right to

individual

INSERT G

the court

or credential

or credential

- i. License to drive.
- ii. License to hunt.
- iii. Occupational licenses.

individual

an individual

The right to

the court

- e. ~~That an individual is not competent to consent to sterilization, if it finds that the person is incapable of understanding the nature, risk, and benefits of sterilization, after the nature, risk, and benefits have been presented in a form that the person is most likely to understand.~~
- f. ~~That an individual is not competent to consent to organ, tissue or bone marrow donations.~~

individual

INSERT X

(d) Guardian authority to exercise certain powers. I not B

1. A court may authorize a guardian of the person to exercise all or part of any of the powers listed in subd. 2. only if it finds, by clear and convincing evidence, that the individual lacks evaluative capacity to exercise the power. The

specified in subd. 2.

court shall authorize the guardian to exercise only those powers that are necessary to provide for the individual's personal needs, safety, and rights in a manner that is appropriate to the individual and that constitutes the least restrictive form of intervention. The court may limit the authority of the guardian with respect to any power to allow the individual to retain power to make decisions about which ~~he or she~~ is able to effectively receive and evaluate information and communicate decisions.

and to exercise the powers

voluntary or involuntary

the individual

2. All of the following are powers subject to subd. 1:

(a) Except as provided elsewhere, give informed consent to medical examination, procedures and medication, except that consent to psychiatric treatment and medication shall be in accordance with ~~the law~~

(b) Research

or if in the ward's best interests,

Unless it can be shown that by clear and convincing evidence that the ward would never have consented to research participation, a court may assign the guardian the power to authorize the ward's participation in an accredited/certified ~~institution~~ research project under the following conditions:

INSERT L

- 1. If the research might help the ward; or
- 2. If the research might not help the ward but might help others, and involves no more than minimal risk of harm to the ward.

the research

(c) In addition, the guardian may petition the court for permission to authorize the ward's participation in research that might not help the ward but might help others even if the research involves greater than minimal risk of harm to the ward if the guardian can establish by clear and convincing evidence that:

The power

(i) the ward would have elected to participate in such research; and

no I

(ii) the proposed research was reviewed and approved by the institution's research and human rights committee, which determined that the research complies with the principles of the statement on the use of human subjects for research adopted by the American Association on Mental Deficiency, and with the regulations for research involving human subjects required by the U.S. Department of Health and Human Services for projects supported by that agency.

federal

of the institution conducting the research

The committee shall have

3/ Experimental Treatment

federally supported

no hyp

(d) Unless it can be shown that by clear and convincing evidence that the ward would never have consented to any experimental treatment, a court may assign the guardian the power to consent to experimental treatment if the court finds that:

(i) the ward's mental or physical status presents a life-threatening ~~medical~~ condition;

no A

- ~~no p~~ the proposed experimental treatment may be a life saving remedy;
- ~~no p~~ all other reasonable traditional alternatives have been exhausted;
- ~~no p~~ two examining physicians <sup>have</sup> recommend the treatment; and,
- ~~no p~~ in the ~~ward's~~ court's ~~independent~~ judgment, the proposed experimental treatment is in the ward's best interests.

The power to

- ~~no p~~ <sup>e.</sup> Give informed consent to social and supported living services.
- ~~no p~~ <sup>f.</sup> Give informed consent to release of medical, treatment, and other confidential records.
- ~~no p~~ <sup>g.</sup> Determine the ~~person's~~ <sup>individual's</sup> county or state of residence.
- ~~no p~~ <sup>h.</sup> Make decisions related to mobility and travel.
- ~~no p~~ <sup>i.</sup> Admit the individual to residential facilities as provided under s. 55.05(5).
- ~~no p~~ <sup>j.</sup> Choose providers of medical, social and supported living services.
- ~~no p~~ <sup>k.</sup> Make decisions regarding educational and vocational placement and supports <sup>services</sup> for employment.
- ~~no p~~ <sup>l.</sup> Make decisions regarding initiating a petition for the termination of marriage.
- ~~no p~~ <sup>m.</sup> Any other power the court may specifically identify.

or make an emergency protective placement under s. 55.06(11)

the individual's

INSERT Y

~~no p~~ In exercising powers and duties delegated to the guardian under this ~~section~~, the guardian shall, consistent with meeting the ~~person's~~ essential requirements for health and safety and protecting the ~~person~~ from abuse, exploitation and neglect:

3.

- ~~no p~~ <sup>a.</sup> Place the least possible restriction on personal liberty and exercise of constitutional rights, and promote the greatest possible integration of the individual into his or her community.
- ~~no p~~ <sup>b.</sup> Make diligent efforts to identify and honor the ~~person's~~ preferences with respect to choice of place of living, personal liberty and mobility, choice of associates, communication with others, personal privacy, and choices related to sexual expression and procreation. In making a decision to act contrary to the ~~person's~~ expressed wishes, the guardian shall take into account the ~~person's~~ understanding of the nature and consequences of the decision, the level of risk involved, the value of the opportunity for the individual to develop decision-making skills, and the need of the individual for wider experience.

do all of the following

individual's

individual's

individual

End of INSERT  
35-6  
26-6

and Statutory

No "g" before the "i" so that okay?

(INSERT G (part of INSERT 35-6))

NO 9

an operator's license, a license issued  
under ch. 29, or a credential, as defined  
in s. 440.01(2)(a),

(INSERT F (part of INSERT ~~356~~)

\*\*\*\* NOTE: Please see the \*\*\*\* NOTE

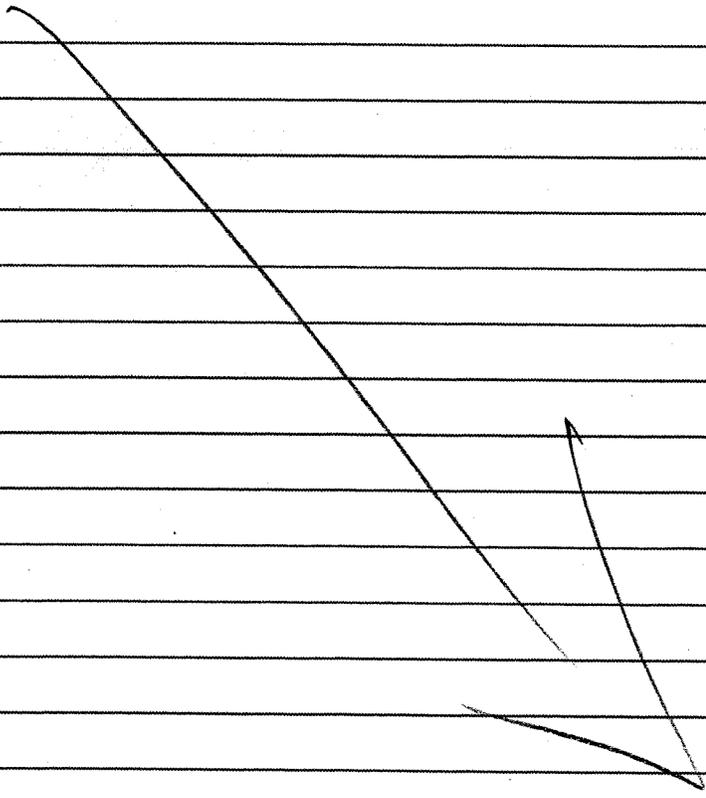
under subd. 1. g., above.

End of  
NOTE

26-6

INSERT X (part of INSERT 354)

g. The right to vote, if the court finds that the individual is incapable of understanding the objective of the elective process.



INSERT (part of) INSERT ~~35-6~~

\*\*\* NOTE: Section 880.33(9), stats., upon which this language is based, requires that the court's determination be communicated in writing by the clerk of court to the election official or agency charged under s. 6.48, 6.92, 6.925, or 6.93 with the responsibility for determining challenges to registration and voting that may be directed against that elector.

Otherwise, I think it is possible that the official or agency may have no way of knowing if the vote is countable. Do you want this requirement added to the language? This

<sup>(CS)</sup> NOTE also applies to subd. 4.

End of INSERT X

26-6

INSERT L (part of INSERT ~~356~~)

no 9

and treatment and to the voluntary receipt by the ward of medication, including any appropriate psychotropic medication, if the guardian has first made a good-faith attempt to discuss with the ward the ward's voluntary receipt of the psychotropic medication and the ward does not protest. For purposes of this

2. a.

subdivision unit, "protest" means make more than one discernible negative response, other than mere silence, to the offer of, recommendation for, or other proffering of voluntary receipt of psychotropic medication. "Protest" does not mean a discernible negative response to a proposed method of administration of

INSERT L (part of INSERT 356)

the psychotropic medication. A guardian may consent to the involuntary administration of psychotropic medication only pursuant to a court order under ch. 55. In determining whether medication or medical treatment is in the ward's best interest, the guardian shall consider the invasiveness of the medication or treatment and the likely benefits and side effects of the medication or treatment.

INSERT 4 (part 1) INSERT 35-6

m. The power to receive all notices on behalf of the ward.

n. The power to act in all proceedings as an advocate of the ward, except the power to enter into a contract that binds the ward or the ward's property or to represent the ward in any legal proceedings pertaining to the property, unless the guardian of the person is also the guardian of the estate.

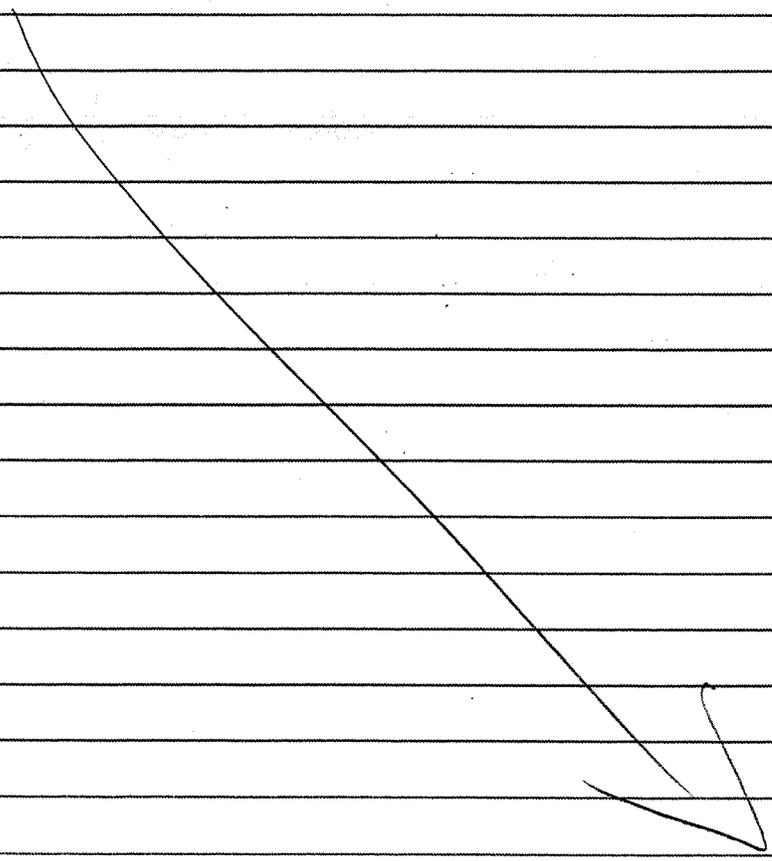
o. The power to apply for protective placement under s. 55.06 or for commitment under s. 51.20 or 51.45 (13) for the ward.

p. The power to have charge of the ward.

\*\*\*\* NOTE: In s. 54.25(2)(d) 2. i., m., n., o., and p., I have attempted to "weave"

26-6 35-6  
INSERT Y (part of INSERT 35-6), stats. ↑ ←

in the parts of s. 880.38(1) (that seemed to fit (in LRB-0039/P1, this provision was renumbered s. 54.25(1)(c), but it didn't fit well there. The power to "have charge of" the word is a change from the statutory "have custody of"; is it an acceptable wording change? ✓



INSERT Y (part of INSERT 3526)

no #

Back again to my confusion

about prohibiting the guardian of the person  
from entering into a contract that binds

the ward - what about a contract with  
a facility (e.g., a nursing home), which

requires a financial commitment? Would it be

necessary for

the guardian of the estate to sign? If the

unchanged

prohibition is, the power of the guardian of the

subd. i. - the vowel "i"

person to "admit a ward to certain

under

residential facilities" is, it would seem,

significantly less than it first

appears to be.

End of  
INSERT  
Y

INSERT 3929 ← 27-7

1/10/11

and, if limited, the specific authority sought  
by the petitioner for the guardian or the  
of the individual that  
specific rights (the petitioner seeks to have  
removed or transferred

INSERT ~~418~~ - 27-17

\*\*\*\* NOTE = Instead of drafting "petition or other moving papers," I consulted Bob Nelson, the civil procedure drafter, who suggested "petition, motion, or other required document." This same comment applies to s. 54.38(2)(a).

End of  
NOTE

(INSERT ~~§ 62.21~~ - 28-10)

# (d) 1. Review any power of attorney for health care under ch. 155, or any durable power of attorney executed by the proposed ward or ~~any~~ <sup>other</sup> advance planning to avoid guardianship in which the proposed ward had engaged.

2. Interview any agent appointed by the proposed ward under any document specified in subd. 1.

3. Report to the court concerning whether or not the proposed ward's advance planning is adequate to preclude guardianship.

INSERT ~~19212~~

29-7

\*\*\*\* NOTE: I did not change "or" to "and" in the third sentence, as requested, because it is important to avoid the implication that the ward, attorney, and GAL must act jointly to present and cross-examine witnesses. I did, however, add "each," to distinguish the actor for that sentence from the actor in the first sentence. In ordinary statutory usage, however, "or," when used to link several actors, allows each actor to perform the action and does not exclude one from the other.

End of  
NOTE

INSERT 50210 - 29-18

\*\*\*\* NOTE: Note that I added  
s. 54.50 (1) <sup>, as well as s. 54.50</sup> (2), as exceptions to the 90-day  
time limit. Note also, that, pending your  
decision, s. 54.50 (2) may be moved to ch.  
55, stats, as an "admission without court  
involvement," at least initially, since it does not depend on  
a guardianship for its action. However,  
please see the following \*\*\*\* NOTE.

End of Note

INSERT ~~526~~ + 31-9

no ¶ :

¶ 1. Contrary to the allegations of the petition, the proposed ward is not any of the following:

¶ a. Incompetent.

¶ b. A spendthrift.

¶ c. A minor. ✓

¶ 2. Advance planning by the ward renders guardianship unnecessary. ✓

¶ 3. The elements of the petition are unproven. ✓

INSERT 54 to 32-17

\*\*\*\* This provision may require amending  
the durable power of attorney chapter, which  
will, if necessary, be done in a subsequent  
version.

End of NOTE

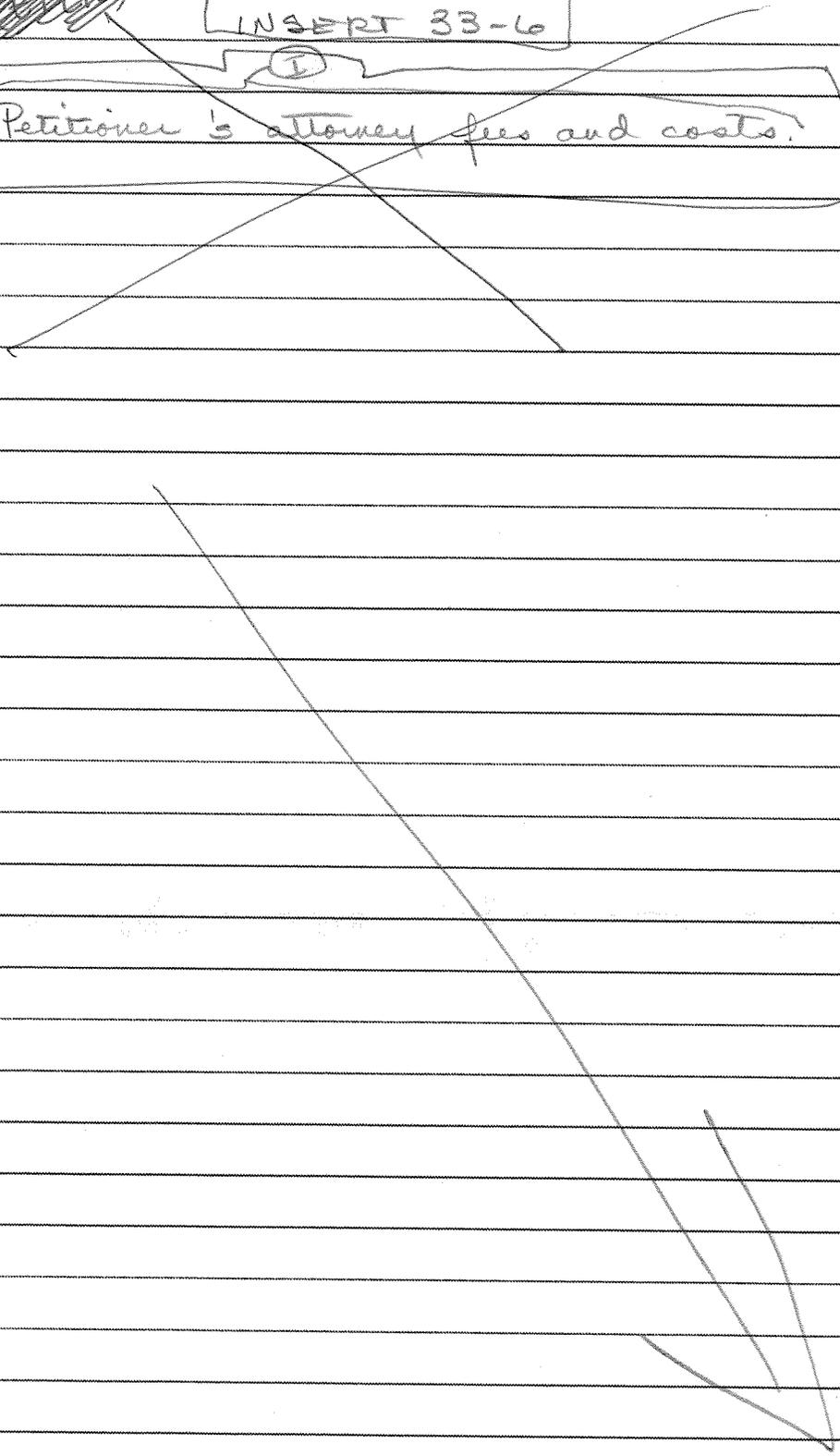
INSERT 33-6

(1)

(a) Petitioner's attorney fees and costs.

*[Scribbled out text]*

*[Scribbled out text]*



(B)  
(4)

INSERT 5518 - 336

(I)

(P)

(c) Fees if guardian is not appointed, If a guardian is not appointed under sub. (2) or (3), the county in which venue lies for the guardianship proceeding is the county liable for any fees due the guardian ad litem. The proposed ward is liable for any fees due his or her legal counsel, except as follows:

1. If counsel is appointed under s. 977.08, the proposed ward is liable only for the fees applicable under s. 977.07 and 977.075.

2. If the court finds the petition for guardianship frivolous under s. 814.025, the court may assess fees to the petitioner.

3. If the proposed ward is indigent and counsel is not appointed under s. 977.08, the county in which venue lies for the guardianship

33-6

[INSERT ~~55-8~~]

proceeding is liable.

\*\*\* NOTE: I included in this paragraph  
mention of public defender representation,  
because par. (b) mentions it. Is this  
drafted as you wish?

End of NOTE

End of INSERT  
33-6